

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Applications of	)	MM Docket No. <u>99-153</u>
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of Station	)	
WTVE(TV), Channel 51,	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	
CORPORATION	)	File No. BPCT-940630KG
	)	
For Construction Permit for a	)	
New Television Station On	)	
Channel 51, Reading, Pennsylvania	)	

**To: Administrative Law Judge Richard L. Sippel**

**PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW OF  
READING BROADCASTING, INC.**

**I. Introduction**

1. In this proceeding, Reading Broadcasting, Inc. ("Reading") seeks renewal of its license to operate station WTVE, Channel 51, in Reading, Pennsylvania. Adams Communications Corporation ("Adams") has filed a mutually exclusive application for a construction permit for a new facility on Channel 51.

2. The proceeding was designated for hearing on May 6, 1999 on the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest; and

(2) To determine, in light of the evidence adduced pursuant to the foregoing issue, which, if either, of the applications should be granted.

Hearing Designation Order, DA 99-865 (Vid. Ser. Div., released May 6, 1999)

("HDO"). The comparative issue designated in the HDO is sometimes referred to as the "Phase I issue."

3. By Memorandum Opinion and Order released on October 15, 1999, the following issue was designated as to Reading's qualifications:

To determine whether Micheal L. Parker engaged in a pattern of misrepresentation and/or lack of candor in failing to advise the Commission of the actual nature and scope of his previously adjudicated misconduct and, if so, the effect of such misrepresentation and/or lack of candor on Reading's qualifications to remain a licensee.

Memorandum Opinion and Order, FCC 99M-61 (released October 15, 1999).

This issue is sometimes referred to in this proceeding as the "Phase II issue."

4. By Memorandum Opinion and Order released on January 20, 2000, the following issues were designated as to Adams' qualifications:

To determine whether Adams Communications Corporation has abused the Commission's comparative renewal processes by

the filing of a broadcast application for speculative and/or other improper purposes.

To determine whether such allegations of an abuse of process, if true, disqualify Adams Communications Corporation from receiving a Commission license.

Memorandum Opinion and Order, FCC 00M-07 (released January 20, 2000).

Those issues were subsequently restated as follows:

- A. To determine whether the principals of Adams Communications Corporation ("Adams") filed, or caused to be filed, an application for construction permit in the hope or expectation of achieving through litigation and settlement, a "precedent" or other recognition that the home shopping television broadcasting format does not serve the public interest.
- B. To determine in light of findings and conclusions as to issue A above, whether the principals of Adams Communications Corporation had, and continue to have, from June 30, 1994, to the present, a bona fide intention to construct and operate a television broadcasting station at Reading, Pennsylvania.
- C. To determine in light of findings and conclusions as to issues A and B above, whether Adams Communications Corporation has engaged and/or is engaging in an abuse of process, i.e., an abuse of the Commission's comparative renewal litigation and settlement process.
- D. If issues A and/or B and/or C are true, to determine whether Adams Communications Corporation is qualified to receive a Commission license, even if Adams would be willing to accept a settlement payment that

is limited to legitimate and prudent expenses  
in return for dismissing its application.

Memorandum Opinion and Order, FCC 00M-19 (released March 6, 2000),  
modifying Memorandum Opinion and Order, FCC 00M-07 (released January  
20, 2000). These issues, collectively, are sometimes referred to as the "Phase  
III issue."

5. Hearing sessions on the Phase I issue were held on January 6,  
2000. Hearing sessions on the Phase II issue and the Phase III issue were  
held on June 12-13, 2000 and July 25, 2000.

## **II. Proposed Findings of Fact**

6. The first section below will present the findings relating to  
Reading's claim to a renewal expectancy and to other comparative factors.  
Findings related to the Phase II issue and the Phase III issue will be  
presented in the following sections.

### **A. The Comparative Issue – Phase I**

#### **1. Comparative Coverage**

7. WTVE operates on Channel 51 with an effective radiated power  
of 1450 kilowatts from an antenna height above average terrain of 229  
meters. The predicted Grade B (64 dBu) contour of WTVE's signal

encompass a land area of 14,128 square kilometers with a population of 3,119,889 persons. [Joint Engineering Statement (Reading Ex. 48 at 2-3)] WTVE has been issued a construction permit to move its site, increase its effective radiated power to 5,000 kilowatts and increase its antenna height above average terrain to 229 meters. Operation with that construction permit will increase WTVE's predicted Grade B coverage area to 21,602 square kilometers with 7,362,938 people. [Id.]

8. The Adams construction permit application proposes operation on Channel 51 with an effective radiated power of 5000 kilowatts and an antenna height above average terrain of 153 meters. The predicted Grade B contour of Adams' proposed signal would encompass a land area of 14,942 square kilometers with a population of 4,260,920 persons. [Id.]

9. There are at least six other authorized over-the-air TV services presently available within the predicted Grade B contours of WTVE's existing and proposed operations. [Id. at 4-5] Likewise, there are at least six other authorized over-the-air TV services presently available within the predicted Grade B contour of Adams' proposed operation. [Id.]

## **2. Diversification of Media Outlets**

10. Reading is licensee of commercial television station WTVE, Reading, Pennsylvania, and certain auxiliary transmission services pursuant to Part 74 of the FCC's rules and business radio licenses which relate to

operation of that station. Reading also holds a construction permit to relocate WTVE's tower and transmitter facility, and is an applicant for a digital television construction permit. [Diversification of Media Outlets (Reading Ex. 4 at 1)]

11. Additionally, Reading possesses an authorization to operate a paging and radiotelephone service on a sub-carrier of its television channel (File No. 21733-CD-P/L-97). [Id.]

12. None of the officers, directors or shareholders of Reading has any interest in any broadcast or radio common carrier licenses or applications, or in any newspapers, magazines, other periodicals, cable television systems or other media of mass communications, except for Micheal L. Parker.<sup>1</sup> [Id.]

13. Mr. Parker has the following interests in broadcast licenses:

(a) Mr. Parker owns 39.33% of the issued and outstanding shares of Reading. Additionally, Mr. Parker votes an additional 8.93% of the shares of Reading pursuant to irrevocable proxy. Mr. Parker is president, chief executive officer, and one of five directors of Reading.<sup>2</sup>

(b) Mr. Parker is president, sole director and sole shareholder of Two If By Sea Broadcasting Corporation, a Delaware corporation ("TIBS"). TIBS is licensee of International Broadcast Station

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<sup>1</sup> This excludes any non-attributable interests of any officers, directors or stockholders of Reading in publicly-traded companies such as AT&T.

<sup>2</sup> The ownership figures for Mr. Parker are as of the Phase I hearing date. As of Reading's annual ownership report for the current year, filed on April 4, 2000, his direct ownership percentage had been reduced to 36.53%. [Reading Ex. 42]

KAIJ, Dallas, Texas, and is the proposed assignee of the licenses and assets of commercial television station WHCT, Hartford, Connecticut, from Martin W. Hoffman, Esq., trustee in bankruptcy (File No. BALCT-930922KE). On April 9, 1993, TIBS was granted a construction permit for a new FM translator station to operate on Channel 221, Upland, California (File No. BPFT-920603KG). TIBS is programming WHCT for the Trustee in Bankruptcy pursuant to a local marketing agreement. TIBS has been programming WHCT pursuant to such an agreement since February 8, 1997.

(c) Mr. Parker is president, sole director and sole shareholder of Desert 31 Television, Inc., licensee of commercial television station KVMD, Twentynine Palms, California.

[Id. at 1-2]

14. Adams and its principals hold no cognizable interest in any media outlets.

### 3. Local Residence and Civic Activities

15. Reading is owned primarily by shareholders who presently reside and/or have resided within the city limits of Reading, Pennsylvania or within the predicted Grade B service contour of WTVE. Those stockholders residing within the city limits of Reading, Pennsylvania at least since 1992 are the following:<sup>3</sup>

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<sup>3</sup> All percentages of ownership are based on Reading's annual ownership report for the current year (Reading Ex. 42, pp. 12-37). Figures are rounded to the nearest full percentage point, except for stockholders with half a percent or less.

Irvin Cohen (10% stockholder)  
Reading, Pennsylvania  
(Resident since 1925)

Edward C. and Noni J. Fischer (1% stockholder)  
Reading, Pennsylvania

Frank D. McCracken (1% stockholder)  
Reading, Pennsylvania  
(Resident since 1989 and many years  
prior to 1989)

[Local Residence and Civic Activities (Reading Ex. 2 at 1)]

16. The communities of Wyomissing, West Lawn, and West Reading are contiguous to the City of Reading. The communities of Sinking Spring and Shillington are very close to the Reading city limits. All are considered to be suburbs of Reading. The following stockholders have resided and presently reside within the predicted Grade B contour of WTVE, but not within the city of license, at least since 1992, except as noted below:

Albert R. Boscov (0.5%)  
Mt. Penn, Pennsylvania

Ben F. Bowers (1%)  
Royersford, Pennsylvania

John R. and Jill L. Bower (1%)  
Wyomissing, Pennsylvania

Harry Brueckman (0.1%)  
Jenkintown, Pennsylvania

Faye H. Clymer, Trustee (4%)  
Robert H. Clymer E.R. Trust  
Wyomissing, Pennsylvania  
(The Clymers have resided in Wyomissing



for many years, but now spend about  
6 months of the year in Wyomissing  
and about 6 months in Florida)

Robert A. Denby (2%)  
West Lawn, Pennsylvania

Dolores Gallen (0.05%)  
West Lawn, Pennsylvania

John H. Gallen (0.1%)  
West Lawn, Pennsylvania

Bernard Gerber (0.5%)  
Wyomissing, Pennsylvania

David Hyman (0.2%)  
Narberth, Pennsylvania

Carol Anne Kasko-MacCallum (0.2%)  
Shillington, Pennsylvania  
(Resident of Grade B service area 1985-present)

Jack A. Linton (8%)  
Mt. Penn, Pennsylvania

John Linton (0.01%)  
Wyomissing, Pennsylvania

Nelson H. and Patricia Long (2%)  
Wyomissing, Pennsylvania

Roger N. and L. Carole Longenecker (3%)  
Leesport, Pennsylvania

Barbara MacCallum (0.1%)  
Wyomissing, PA  
(Resident since 1960; Reading resident, 1936-60)

David E. & Barbara W. Mann, Sr. (1%)  
West Lawn, Pennsylvania  
(Resident since 1968)

Catherine Z. Morrow (0.5%)  
Shillington, Pennsylvania

Richard M. Palmer, Jr. (0.1%)  
West Lawn, Pennsylvania

Micheal L. Parker (45.46%)  
Wyomissing, Mount Penn, Pennsylvania  
(Part-time resident of Mount Penn,  
Pennsylvania, and Wyomissing, Pennsylvania,  
from about  
1989 through December 1996)

Sergio V. & Penelope P. Proserpi (1%)  
Shillington, Pennsylvania

Uriel and Kelly Rendon (1%)  
Cheltenham, Pennsylvania

Jose Rivera (0.1%)  
Warminster, Pennsylvania  
(Resident since 1982)

Leah Beth Rotenberg (0.2%)  
Wyomissing, Pennsylvania

Jonathan Peter Rotenberg (0.2%)  
Wyomissing, Pennsylvania

Adolpho E. Rodriguez (0.1%)  
West Reading, Pennsylvania

Larry A. and Alison A. Rotenberg (0.03%)  
Wyomissing, Pennsylvania

David A. Rotenberg (0.2%)  
Wyomissing, Pennsylvania

Donald E. and Mary Lu Stoudt, TEI(0.1%)  
West Lawn, Pennsylvania

Ralph Tietbohl (1%)  
Sinking Spring, Pennsylvania

Joanne D. van Roden (0.3%)  
Wyomissing, Pennsylvania

Patricia J. Verbinski (1%)  
Wyomissing, Pennsylvania

[Id. at 1-4]

17. The following shareholders of Reading have participated in the following civic activities (dates are best estimates) in Reading or elsewhere within the WTVE Grade B contour:

Jack Linton

Treasurer, Berks County Bar Association, 1970-72  
Chairperson, Tax Section, Berks County Bar Association, 1994-95  
Member, Tax Committee, Eastern PA Delegation, White House Conference on Small Business, 1995  
President, Berks County Mental Health Association, 1968-70  
President, Reading Jewish Community Center, Circa 1982  
Coach, Shillington Soccer Club, Berks County Youth Soccer League  
Treasurer, Reading Soccer, 1982-84  
President & Co-Founder, Estate Planning Council of Berks County, Circa 1972  
Member, Berk County Mental Health Retardation Board, 1980's (6 yrs.)  
President & Director, Berks County Chamber of Commerce, 1970's (2 yrs.)  
Delegate, Congressional Summit on Small Business, 1998  
Board of Directors, Reading Jewish Community Center Foundation, 1982-present  
Board of Trustees, Reading Rehabilitation Hospital, 1992-98  
Chairman, Planned Giving Committee, Reading Rehabilitation Hospital, 1992-98  
Member, Government Affairs Committee, Berks County Chamber of Commerce  
Member, Tax Committee, Berks County Chamber of Commerce  
Member, Exeter Township School Board, 1999  
Member, Exeter Township Nonuniformed Employees Pension Board, 1996-1999  
Assistant Coach Berks Youth Soccer, 1999  
Assistant Coach Berks Youth Basketball, 1999

David Mann

Volunteer Mathematics Tutor, RACC GED II Program, 5 years to Present  
Volunteer Tax Preparer for AARP VITA Program, 2 years to Present

Barbara Mann

President, Junior League of Reading, 1981-82  
Board of Directors, Red Cross (Berks County), 1970's  
Church Council, Advent Lutheran Church, 1994-96 and 1999 – Present

Catherine Z. Morrow

Past President, Berks County Med. Soc. Alliance  
Past President Woman's Club of Shillington and various committees  
Past Vice President, Staff Wives Auxiliary to the Reading Hospital  
Treasurer, Jr. Woman's Club of Shillington  
Past President – PTA  
Past Director of Grace Lutheran Church Bible School  
Past President – Choir of Grace Lutheran Church  
Superintendent – Jr. High Dept. Grace Church  
Musical Programs for Senior Citizens, Church Groups and Civic  
Organizations (25 years)  
Past Assistant Organist Grace Church  
Past Chairman Music Committee for 100<sup>th</sup> Anniversary Grace Church  
Meals on Wheels – 30 years  
Collected for Heart, Cancer, MS, etc.

Robert H. Clymer

Vice Chairman, Park Commission, Wyomissing

Jose Rivera

Vice President, Latino Leadership Alliance Buck County, 1996-Present  
Deacon, Buxmont Baptist Church, Hatboro, PA, 1996-Present  
Treasurer, Philadelphia Hispanic Chamber, 1995-Present  
Vice President, Philadelphia Hispanic Chamber, 1996-1998

Ralph H. Tietbohl

Original Organizer and Advisor to Berks County Association of Medical  
Assistants for Physicians, 7 years  
School Physician, Wilson High School, 15 years  
Organizer of Group of Faculty M.D.s. to form group of faculty doctors known  
as "Choice" to provide coverage for weekends and holidays to cover  
emergencies in our area, 1970-1998

Roger N. Longenecker

Board of Directors, CONCERN (volunteer professional services for children/families), Fleetwood, PA since 1980

Micheal L. Parker

Reading Chamber of Commerce, 1990-96

Irvin Cohen

Reading City Planning Commission, 1974-77  
President, Reading Jewish Community Center, 1980-84  
President, Jewish Community Foundation, 1985-Present  
Treasurer, Berks County Penn State Campus, 1970-75  
Penn State Auxiliary Board, Present  
Board of Directors, Manufacturers Ass'n, Present  
Board of Directors, Reading Public Museum, Present  
Board of Directors, Reading Jewish Community Center, Present  
Board of Directors, Jewish Federation, Present  
Underwriter, Police Athletic League of Greater Reading performing arts center, Present

Frank D. McCracken

Member of Berks County chapter of the NAACP from prior to 1989 – Present  
Member of Board of Trustees of Kutztown University, Kutztown, Pennsylvania (within the predicted coverage area of WTVE) from 1989-1995  
Pastor of St. James Chapel, COGIC (Churches of God in Christ) a predominantly Black congregation, Reading, Pennsylvania, from 1985 – Present  
Elected City Councilman in Reading 1992-1996. As Councilman, also served as appointed director of public safety from 1992-1996  
Finance Board of Commonwealth jurisdiction, COGIC, from 1989 – Present  
Member and President of the Victor Lodge No. 73, F.A.A.M. (masonic lodge) in Reading 1992 – Present  
Advisory Board to Pennsylvania State University, Berks Campus, Reading, 1989-1992  
Executive Director of Reading Police Athletic League from prior to 1989 until 1993  
Reading Chamber of Commerce 1989 – Present  
Reading Ministerium, organization of Reading-area clergymen, 1989 – Present

[Id. at 5-7]

18. Adams' principals claim no local residence or civic involvement credit.

**4. Past Broadcast Experience**

19. Reading claims credit for the past broadcast experience of three of its principals.

**a. Micheal L. Parker, President, Director and Shareholder**

20. Micheal L. Parker became executive vice president and a director of Reading in 1989. He became president in 1991, and he became a shareholder in 1991. Mr. Parker has been president of Reading from 1991 to August 1997, and again from November 1997 to the present. Mr. Parker was the general manager of WTVE(TV) from approximately 1991-96. Mr. Parker managed Reading's efforts in taking WTVE out of bankruptcy, which was successfully done in 1992. [Past Broadcast Experience (Reading Ex. 3 at 1)]

21. Mr. Parker was president, a director and a shareholder of Totem Broadcasting, Inc., licensee of commercial television station KTBX, Anchorage, Alaska from approximately 1982 until 1984, during the construction and initial operation of the station. He was executive vice president, a director and a shareholder of West Coast United Broadcasting,

Inc., licensee of commercial television station KWBB, San Francisco, from approximately 1986 until 1993, during the construction and initial operation of the station. [Id.]

22. Mr. Parker was the managing member of Massachusetts Redevelopment Limited Liability Company and its predecessors-in-interest, permittee of commercial television station WHRC(TV), Norwell, Massachusetts, from 1992 through its sale in June 1997. The station had been dark and the licensee was in receivership. Mr. Parker oversaw the efforts to put the station into operation by arranging for financing, programming, personnel and equipment. The station was constructed and commenced operation in December 1996. [Id. at 1-2]

23. Mr. Parker has been the president, sole director and sole shareholder of Desert 31 Television, Inc., permittee of KVMD-TV, Twentynine Palms, California, since 1992. The station was constructed and commenced operation in September 1996. [Id. at 2]

24. Finally, Mr. Parker has been president, sole director and sole shareholder of TIBS since 1993. TIBS is the licensee of International Broadcast Station KAIJ, Dallas, Texas. In February 1997 the company constructed and commenced programming commercial television station WHCT, Hartford, Connecticut, pursuant to a local marketing agreement with the holder of the authorization for that facility, Martin W. Hoffman, Esq., Trustee in Bankruptcy for the Estate of Astroline Communications Company,

Limited Partnership. Mr. Parker oversaw the efforts to put the station back into operation by arranging for financing, programming, personnel and equipment. [Id.]

**b. Jack A. Linton, Director and Shareholder**

25. Mr. Linton is a principal in the law firm of Linton, Distasio, Adams and Kaufman, Reading, Pennsylvania. He serves as a director and corporate attorney for Reading. Mr. Linton has been a shareholder of Reading from the time it put WTVE on the air. Mr. Linton served as house counsel for Bob Banner Productions, a television production company, New York City, from 1963 through 1966. Mr. Linton has served as a director of Reading from 1989 through October 1991, and from February 1998 to the present. He has served as corporate attorney for Reading from 1989 through November 1997, and from April 1999 to the present. Additionally, Mr. Linton served as a part-time sports announcer for Reading in 1980. [Id. at 2-3]

**c. Frank D. McCracken, Executive Vice President, Director and Shareholder**

26. Mr. McCracken has been a director of Reading since 1991. He became executive vice president of Reading and began full-time managerial work at WTVE in 1996. He became a shareholder of Reading in March 1999. Mr. McCracken has been responsible for managing the day-to-day operation of WTVE, Reading, Pennsylvania since December of 1996. He has been



producer of the program Air Gospel, which airs weekly on WTVE, since 1996.

[Id. at 3]

27. Adams' principals claim no credit for past broadcast experience.

## 5. Reading's Renewal Expectancy.

### a. Background

28. The relevant period of time for assessing Reading's claim to a renewal expectancy is August 1, 1989 to August 1, 1994. See Memorandum Opinion and Order, FCC 99M-47 (released August 9, 1999) at ¶¶ 10-13. Reading was in Chapter 11 bankruptcy from 1986 until March 12, 1992. Id. Reading received the Commission's approval to operate as a debtor-in-possession in 1988 and received the Commission's approval for its reorganization plan to emerge from bankruptcy in 1992. Id. However, throughout the 1989-94 license term, control over WTVE's programming resided with Reading and its board of directors. Id.

29. WTVE was an affiliate of the Home Shopping Network during the entire 1989-94 license term. [Testimony of Kimberly G. Bradley (Reading Ex. 8 at 1)] WTVE was classified by Arbitron, Inc. as a station in the Philadelphia, PA Area of Dominant Influence (since renamed Designated market Area or "DMA"). [Testimony of George Alan Mattmiller, Jr. (Reading Ex. 6 at 2)] Reading, Pennsylvania is geographically situated between the